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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,551	05/25/2000	William Y. Conwell	60204	5990

23735 7590 02/20/2004

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ART UNIT	PAPER NUMBER
2177	10

DATE MAILED: 02/20/2004

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 15

Application Number: 09/578,551
Filing Date: May 25, 2000
Appellant(s): CONWELL ET AL.

Steven W. Stewart, Reg. No. 45,133
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 11, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-27 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,269,361	Davis et al.	07-2001
6,389,467	EYAL	05-2002

6,401,118 THOMAS 06-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 14, 16, 17, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Davis et al. ('Davis' hereinafter), US Patent 6,269,361.

Claims 1-5, 7-12, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. ('Davis' hereinafter), US Patent 6,269,361 in view of Aviv Eyal ('Eyal' hereinafter), US Patent 6,389,467.

Claims 15, 18, 19, 24, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. ('Davis' hereinafter), US Patent 6,269,361 as applied to claims 14, 16, 17 and 25 in view of Aviv Eyal ('Eyal' hereinafter), US Patent 6,389,467.

Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. ('Davis' hereinafter), US Patent 6,269,361 in view of Aviv Eyal ('Eyal' hereinafter), US Patent 6,389,467 as applied to claims 1-5, 7-12, and 20-23 and further in view of Jason Thomas ('Jason' hereinafter), US Patent 6,401,118.

This rejection is set forth in prior Office Action, Paper No. 9.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another

who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 14, 16, 17, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,269,361 B1 issued to Davis et al. ('Davis', hereinafter).

As per claim 14, Davis discloses a method of managing a universe of identifiers, some of said identifiers being active and having Internet resources associated therewith (col. 7, lines 33-40). The claimed step of, 'others of said identifiers being inactive, the method including receiving a query corresponding to an inactive identifier' is disclosed Davis as search engine program permits network users, upon navigating to the search engine web servers capable of submitting queries to the search engine web server through their browser program, to type keyword queries to identify pages interest among the millions page available on the World Wide Web. The users will get result with active and inactive web pages (col. 8, lines 55-65 et seq). Finally, the claimed step of 'in response, initiating a time-limited auction, a winner of said auction being granted the privilege of associating an internet resource with said identifier for at least a predetermined time period' since the cost of a search listing is calculated by multiplying the bid amount during a specified time period (predetermined), every cost projection algorithm must generally determine an estimate number of clicks per month or other specified time period for a search listing (col. 21, lines 7-13).

As to claim 16, Davis discloses 'a method of auctioning to the highest bidder the privilege of defining a link that is to be associated, for predetermined time period, with

an identifier through a database' as since the cost of a search listing is calculated by multiplying the bid amount during a specified time period (predetermined), every cost projection algorithm must generally determine an estimate number of clicks per month or other specified time period for a search (database) listing (col. 21, lines 7-13). The claimed step of 'at expiry of said predetermined time period, reauctioning said privilege' is disclosed Davis as the daily run rate to obtain a projected number of days to exhaustion or expiration in the time period (col. 21, lines 23-25 et seq).

As per claim 25, 'automatically deriving the identifier using a device maintained by said winner, without requiring said winner to type or otherwise manually enter the identifier' is disclosed Davis as automatic notification will be sent to the advertiser at that time at col. 16, lines 14-15 et seq.

As per claim 17, 'proceeds of said re-auctioning are shared with the high bidder,...' is disclosed Davis at col. 21, lines 19-25.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> " A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."
>
> If this application currently names joint inventors, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary in considering patentability of the claims under 35 U.S.C. § 103. Applicant is

advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Claims 1-5, 7-12, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,269,361 issued to Davis et al. ('Davis', hereinafter), in view of US Patent 6,389,467 issued to Aviv Eyal ('Eyal', hereinafter).

As per claim 1, Davis discloses a method of operating database that plural records, the method including receives queries, each including an identifier, and replying to said queries by reference to information for database records associated with said identifiers, said identifiers being drawn from a universe of possible identifiers, a majority of which do not have active database records associated therewith (col. 8, lines 55-65 et seq). The claimed step of, 'receiving a query from a user including an identifier,....'is disclosed in Davis patent as the bid amount is included on the identification and the search result list is preferably combined with "non-paid" web site descriptions generated by a conventional Internet search engine, preferably including listings generated according to mathematics-based database search algorithms. The combination of paid and unpaid listings helps ensure that the searcher will receive the most complete and relevant search results (col. 5 lines 42-50). Finally, claimed step of 'permitting the user to create an active database record,...' is disclosed Davis as create a new system of advertising where advertisers target the most interested consumers by participating in a free market which attaches a monetary cost for an advertiser's listing in a search result list generated using advertiser-selected search terms (col. 4 lines 34-48). Although Davis discloses media content object, which appear to be analogous to

content in the Internet browsing, the reference does not specifically detail a media content object as depicted in figure 2 of the present application. However, Eyal discloses an analogous method wherein each media site provide access to media through one or more media links available (existing) at the site or through other means. The media links identify web resources having media content that substantially receive and permit in the requested object from the media (col. 12, lines 13-17). It would have been to obvious one ordinarily skilled in the art at the time of processing queries, at the present invention to combine the teachings of the cited references because the media content object of Eyal's method would have provided Davis's with necessary infrastructure, which would allow the media content object to generate their respective queries, as explained in Eyal, col. 12, lines 13-17 et seq.

As per claim 4, Davis discloses a method deriving an identifier conrresponding,... (Abstract, lines 22-34). The claimed step of, 'querying the database with the derived identifier' is disclosed Davis as determines where the network information providers listing will appear on the search results list page that is generated in response to a query of the search term by searcher located at a client computer on the computer network (Abstract, lines 27-34). Finally, the claimed step of, '....,permitting a party who first queried the database,...' is disclosed Davis as create a new system of advertising where advertisers target the most interested consumers by participating in a free market which attaches a monetary cost for an advertiser's listing in a search result list generated using advertiser-selected search terms (col. 4 lines 34-48).Although Davis discloses media content object, which appear to be analogous to content in the Internet

browsing, the reference does not specifically detail a media content object as depicted in figure 2 of the present application. However, Eyal discloses an analogous method wherein each media site provide access to media through one or more media links available (existing) at the site or through other means. The media links identify web resources having media content that substantially receive and permit in the requested object from the media (col. 12, lines 13-17). It would have been to obvious one ordinarily skilled in the art at the time of processing queries, at the present invention to combine the teachings of the cited references because the media content object of Eyal's method would have provided Davis's with necessary infrastructure, which would allow the media content object to generate their respective queries, as explained in Eyal, col. 12, lines 13-17 et seq.

As to claim 5, Davis teaches '...,audio file' at col. 8, lines 15-18.

As per claim 2, Davis teaches '....,allowing the user to pay fee,...' at col. 5 lines 35-51.

As per claim 3, Davis teaches, 'allowing the user to make a first bid,...' at Abstract, lines 27-34.

As to claim 7, Davis teaches, '...,video file' at col. 8, lines 15-18.

As to claim 8, Davis teaches, 'deriving includes consulting resource,...' at col. 8, lines 15-18.

As per claim 9, Davis teaches, 'resource is database' at col. 6, lines 16-25.

As per claim 11, Davis teaches, 'several identifiers corresponds,...' at col. 5, lines 35-43.

As per claim 10, Davis teaches, 'deriving includes processing data,...' at col. 5, lines 35-43.

As per claim 12, Davis teaches, 'identifiers automatically generated from the different audio,...' at col. 8, lines 15-18.

As per claim 20, 'a primary function of the database is to link consumers to internet resources, such as web pages, that promote goods or services and that are offered by commercial entities, and said user is one of said consumers, wherein the consumer can participate in such linking in a manner customarily reserved to the commercial entities' is disclosed Davis as in the Internet, advertiser web servers are connected to the commercial information service (col. 7, lines 45-55 et seq).

As per claim 21, 'automatically providing the identifier from a process on a user device - such as a computer - to the database, without requiring the user to type or otherwise manually enter the identifier' is disclosed Davis as receives data identifying the advertiser and retrieves advertiser's account from the database (col. 14, lines 38-39 et seq).

As per claim 22, 'a primary function of the database is to link consumers to internet resources, such as web pages, that promote goods or services that are related to media content objects and that are offered by commercial entities, and said party is one of said consumers, wherein the consumer can participate in such linking in a manner customarily reserved to the commercial entities' is disclosed Davis as in the Internet, advertiser web servers are connected to the commercial information service (col. 7, lines 45-55 et seq).

As per claim 23, 'automatically providing the identifier form a process on a device maintained by said party-such as a computer-to database, without requiring said party to type or otherwise manually enter the identifier' is disclosed Davis as automatic notification will be sent to the advertiser at that time (col. 16, lines 14-15 et seq).

Claims 15, 18, 19, 24, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,269,361 issued to Davis et al. ('Davis', hereinafter) as applied to claims 14, 16, 17, and 25 in view of US Patent 6,389,467 issued to Aviv Eyal ('Eyal', hereinafter).

As per claim 15, Davis teaches, "active identifiers correspond,....' as the bid amount is included on the identification and the search result list is preferably combined with "non-paid" web site descriptions generated by a conventional Internet search engine, preferably including listings generated according to mathematics-based database search algorithms. The combination of paid and unpaid listings helps ensure that the searcher will receive the most complete and relevant search results (col. 5 lines 42-50).

As per claims 18, Davis teaches 'identifier corresponds and derived,....' as determines where the network information providers listing will appear on the search results list page that is generated in response to a query of the search term by searcher located at a client computer on the computer network (Abstract, lines 27-34).

As per claim 19, Davis teaches 'identifier corresponds and derived,....'as determines where the network information providers listing will appear on the search

results list page that is generated in response to a query of the search term (Abstract, lines 27-29).

As per claim 24, 'identifiers and internet resources are associated through a database, a primary function of which is to link consumers to internet resources that promote goods or services that are related to objects and that are offered by commercial entities, and said winner is one of said consumers, wherein the consumer can participate in such linking in a manner customarily reserved to the commercial entities' is disclosed Davis as in the Internet, advertiser web servers are connected to the commercial information service (col. 7, lines 45-55).

As per claim 26, 'a primary function of the database is to link consumers to internet resources that promote goods or services' is disclosed Davis as in the Internet connection with client and server computer commercial information services are available (col. 7, lines 50-55 et seq).

As per claim 27, 'includes automatically deriving the identifier' is disclosed Davis as receives data identifying the advertiser and retrieves advertiser's account from the database (col. 14, lines 38-39 et seq).

Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,269,361 issued to Davis et al. ('Davis', hereinafter) in view of US Patent 6,389,467 issued to Aviv Eyal ('Eyal', hereinafter), as applied to claims 1-5, 7-12, and 20-23 and further in view of US Patent 6,401,118 issued to Jason Thomas ('Thomas', hereinafter).

As per claim 6, although Davis and Eyal discloses MP3 audio file, which appear to be analogous to media content in the Internet browsing, the references do not specifically detail of MP3 audio file as depicted in figure 2 of the present application. However, Thomas discloses an analogous method wherein within the preliminary time set contains files, those files contain potentially infringing materials like as mp3 music file (col. 6, lines 62-65). It would have been to obvious one ordinarily skilled in the art at the time of processing queries with MP3 file, at the present invention to combine the teachings of the cited references because the MP3 audio file of Thomas's and media content object of Eyal's method would have provided Davis's with necessary infrastructure, which would allow the to process the MP3 audio file with media content object to process their respective files, as explained in Thomas, col. 6, lines 62-65 et seq.

As per claim 13, although Davis and Eyal discloses MP3 audio file, which appear to be analogous to media content in the Internet browsing, the references do not specifically detail of MP3 audio file as depicted in figure 2 of the present application. However, Thomas discloses an analogous method wherein within the preliminary time set contains files, those files contain potentially infringing materials like as mp3 music file (col. 6, lines 62-65). It would have been to obvious one ordinarily skilled in the art at the time of processing queries with MP3 file, at the present invention to combine the teachings of the cited references because the MP3 audio file of Thomas's and media content object of Eyal's method would have provided Davis's with necessary infrastructure, which would allow the to process the MP3 audio file with media content

object to process their respective files, as explained in Thomas, col. 6, lines 62-65 et seq.

(11) Response to Argument

The Examiner respectfully traverses Appellant's argument regarding the Davis Patent (6,269,361), Eyal Patent (6,389,467) and Thomas Patent (6,401,118).

Response to Appellant's Argument Regarding claims 14, 16, 17 and 25 that Davis Fails to Disclose "receiving a query corresponding to an inactive identifier, and in response, initiating a time-limited auction, a winner of said auction being granted the privilege of associating an internet resource with said identifier for at least a predetermined time period".

Appellant's Specification addresses when the registry database first receives a query corresponding to an un-used identifier, the person initiating the query is given an opportunity to lease that identifier for a predetermined period, such as two months. Upon payment of a nominal fee (e.g. $10), the user can specify a URL that will be stored in the Registry database in association with that identifier, and to which subsequent users will be directed. When a user first queries an un-used identifier in the Registry database, an auction commences, with a nominal opening bid (e.g. $10). The auction continues for a short period, such as a week or a month, allowing other persons who encounter such music early in its distribution life to have a chance at gaining the leasehold rights. A the end of the auction, the winner is granted a lease to that identifier for a predetermined period and can specify the URL with which that identifier is associated (see specification page 4, lines 4-16).

Davis discloses search result list that is generated when the bidded search term is entered by a searcher using the search engine. The search result list is arranged in order of decreasing bid amount, with the search listing corresponding to the highest bids displayed first to the searcher. Each search listing corresponding to a bid is identified on the display as a paid listing. Most preferably, the bid amount is included on the identification. The search result list of the present invention is preferably combined with "non-paid" web site descriptions generated by a conventional Internet search engine, preferably including listings generated according to mathematics-based database search algorithms as discussed above. The combination of paid and unpaid listings helps ensure that the searcher will receive the most complete and relevant search results. Most preferably, the non-paid listings are considered to have a bid amount of zero and are therefore underneath the paid results (see col. 5, lines 36-52, Davis).

Appellant argued that Davis does not disclose: "**receiving a query corresponding to an inactive identifier". The Examiner respectfully disagrees**.

Similarly, Davis teaches the bid amount is included on the identification and the search result list is preferably combined with "non-paid" web site descriptions generated by a conventional Internet search engine, preferably including listings generated according to mathematics-based database search algorithms. The combination of paid and unpaid listings helps ensure that the searcher will receive the most complete and relevant search results (col. 5 lines 42-50, Davis).

Appellant argued that Davis does not disclose: "**initiation of time-limited auction**". **The Examiner respectfully disagrees.**

Similarly, Davis teaches a consumer utilizing a search engine that facilitates this on-line marketplace will find companies or businesses that offer the products, services, or information that the consumer is seeking. In this on-line marketplace, companies selling products, services, or information bid in an open auction environment (time-limited) for positions on a search result list generated by an Internet search engine. Bid auction is related with the time (see col. 3, lines 59-65 et seq).

Appellant argued that Davis does not disclose: "**a winner of said auction being granted the privilege of associating an internet resource with said identifier for at least a predetermined time period**" **The Examiner respectfully disagrees**.

Similarly, Davis teaches as stated above and since the cost of a search listing is calculated by multiplying the bid amount during a specified time period (predetermined), every cost projection algorithm must generally determine an estimate number of clicks per month or other specified time period for a search listing. In order to bids customer have given access in the Internet (col. 21, lines 7-13).

Appellant argued that Davis does not disclose "**auctioning privilege for predetermined time period and at the expiry of the predetermined time period, re-auctioning the privilege**". **The Examiner respectfully disagrees**.

Similarly, Davis teaches as stated above and the daily run rate to obtain a projected number of days to exhaustion or expiration in the time period. When auctioning privilege is there re-auctioning privilege can also be given (col. 21, lines 23-25 et seq).

Appellant argued that Thomas does not disclose, "**MP3 audio file**". **The Examiner respectfully disagrees.**

Similarly, Thomas teaches as within the preliminary time set contains files, those files contain potentially infringing materials like as mp3 music file (col. 6, lines 62-65).

Appellant argued that Davis and Eyal do not disclose, "**different audio content**". **Examiner respectfully disagrees.**

Similarly, Davis teaches as the browser programs 16 can provide access to other pages or records when the user "clicks" on hyperlinks to other web pages. Such hyperlinks are located within the web pages 30 and provide an automated way for the user to enter the URL of another page and to retrieve that page. The pages can be data records including as content plain textual information, or more complex digitally encoded multimedia content, such as software programs, graphics, audio signals, videos, and so forth (see col. 8, lines 10-19).

Appellant argued that "**the prima facie case of obviousness has not established**". **Examiner respectfully disagrees.**

Examiner respectfully submits that the prima facie case of obviousness have been established as although Davis discloses media content object, which appear to be analogous to content in the Internet browsing, the reference does not specifically detail a media content object as depicted in figure 2 of the present application. However, Eyal discloses an analogous method wherein each media site provide access to media through one or more media links available (existing) at the site or through other means. The media links identify web resources having media content that substantially receive

and permit in the requested object from the media (col. 12, lines 13-17). It would have been to obvious one ordinarily skilled in the art at the time of processing queries, at the present invention to combine the teachings of the cited references because the media content object of Eyal's method would have provided Davis's with necessary infrastructure, which would allow the media content object to generate their respective queries, as explained in Eyal, col. 12, lines 13-17 et seq. In the final Office Action, on page 5-6 has given the such motivation.

Appellant argued that Eyal does not disclose, "**deriving an identifier from an existing media content object**". **Examiner respectfully disagrees.**

Similar Eyal as, each media site provide access to media through one or more media links available (existing) at the site or through other means. The media links identify web resources having media content (col. 12, lines 13-17).

Appellant argued that Davis/Eyal does not teach, "**for a predetermined period commencing with said first bid**". **Examiner respectfully disagrees.**

Similar, Davis teaches as, since the cost of a search listing is calculated by multiplying the bid amount during a specified time period (predetermined), every cost projection algorithm must generally determine an estimate number of clicks per month or other specified time period for a search listing (col. 21, lines 7-13).

Appellant argued that Davis/Eyal do not teach, "**for a predetermined period with an identifier**". **Examiner respectfully disagrees.**

Similar, Davis teaches as, predefined report types includes activity tracked during the time period and the reports includes identification data (col. 22, lines 10-19).

Appellant argued that Davis/Eyal do not teach, "**a primary function of the database is to link consumers to internet resources, such as web pages, that promote goods or services and that are offered by commercial entities, and said user is one of said consumers, wherein the consumer can participate in such linking in a manner customarily reserved to the commercial entities**". **Examiner respectfully disagrees.**

Similar, Davis teaches as in the Internet, advertiser web servers are connected to the commercial information service (col. 7, lines 45-55 et seq).

Appellant argued that Davis/Eyal do not teach, "**automatically providing the identifier from a process on a user device - such as a computer - to the database, without requiring the user to type or otherwise manually enter the identifier**". **Examiner respectfully disagrees.**

Similar, Davis teaches as receives data identifying the advertiser and retrieves advertiser's account from the database (col. 14, lines 38-39 et seq).

Appellant argued that Davis/Eyal do not teach, "**a primary function of the database is to link consumers to internet resources that promote goods or services**". **Examiner respectfully disagrees.**

Similar, Davis teaches as in the Internet connection with client and server computer commercial information services are available (col. 7, lines 50-55 et seq).

Appellant argued that Davis/Eyal do not teach, "**includes automatically deriving the identifier**". **Examiner respectfully disagrees.**

Similar, Davis teaches as receives data identifying the advertiser and retrieves advertiser's account from the database (col. 14, lines 38-39 et seq)

Appellant argued that "**Davis, Eyal and Thomas would not find no incentive to modify and jigsaw together the disparate teachings of references**". **Examiner respectfully disagrees**.

Examiner respectfully submits that references find incentive after modification, because, although Davis and Eyal discloses MP3 audio file, which appear to be analogous to media content in the Internet browsing, the references do not specifically detail of MP3 audio file as depicted in figure 2 of the present application. However, Thomas discloses an analogous method wherein within the preliminary time set contains files, those files contain potentially infringing materials like as mp3 music file (col. 6, lines 62-65). It would have been to obvious one ordinarily skilled in the art at the time of processing queries with MP3 file, at the present invention to combine the teachings of the cited references because the MP3 audio file of Thomas's and media content object of Eyal's method would have provided Davis's with necessary infrastructure, which would allow the to process the MP3 audio file with media content object to process their respective files, as explained in Thomas, col. 6, lines 62-65 et seq. So combination of the references have been established the incentive.

Conclusion

The references disclose the claimed receiving a query corresponding to an inactive identifier, and in response, initiating a time-limited auction, a winner of said auction being granted the privilege of associating an internet resource with said identifier for at least a predetermined time period, MP3 player because Davis provides receiving a query corresponding to an inactive identifier, and in response, initiating a time-limited auction, a winner of said auction being granted the privilege of associating an internet resource with said identifier for at least a predetermined time period. Last, Davis, Eyal and Thomas can be properly combined to yield the claimed invention since they are analogous art, and Eyal and Thomas further complements of Davis. Examiner explained all the limitation as taught by Davis, Eyal and Thomas. In light of the foregoing arguments, the Examiner respectfully requests the honorable Board of Appeals and Interferences to sustain the rejection.

Respectfully submitted,

Mohammad Ali

February 17, 2004

Conferees:

1. Shahid Alam, Primary Examiner, AU 2172 SA

2. Alford Kindred, Primary Examiner, AU 2172

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